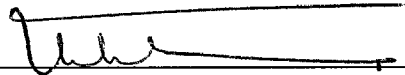


PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number: 06975-144001
I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450. Date of Deposit _____ Signature _____ Typed or Printed Name of Person Signing Certificate _____	Application Number 09/819,899	Filed March 29, 2001
	First Named Inventor James Paul Haughwout	
	Art Unit 3625	Examiner Maria Thein
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>The Notice of Appeal was filed on April 9, 2007.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record (Reg. No.)</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>L0250</u></p> </div> <div style="width: 45%; text-align: center;">  _____ Signature <u>Babak Akhlaghi</u> _____ Typed or printed name <u>(202) 783-5070</u> _____ Telephone number <u>June 19, 2007</u> _____ Date </div> </div> <p style="font-size: small; margin-top: 20px;">NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below'.</p>		
<input type="checkbox"/> Total of no. forms are submitted.		

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : James Paul Haughwout
Serial No. : 09/819,899
Filed : March 29, 2001
Title : SMART TRANSFER

Art Unit : 3625
Examiner : Maria Thein
Conf. No. : 5374

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Claims 90, 94, 96, 97, 107, 111, 112, 120, 124, 125, and 133-150 are pending in this application, with claims 90, 107, 120 and 133-136 being independent. Independent claims 90, 107, 120, and 136, along with their dependent claims 94, 96, 97, 111, 112, 124, 125, and 137-153 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 6,553,113 (“Dhir”) in view of U.S. Patent Number 6,665,644 (“Kanevsky”).

Appellant specifically ask the panel to review the issues highlighted below:

1. Kanevsky fails to describe or suggest “storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches” (emphasis added), as recited in claim 90 and similarly recited in claims 107 and 120.

The Final Office Action acknowledges that “Dhir does not disclose a preference of the caller not to receive any sales pitch.” Final Office Action, page 3, lines 12-14. Instead, the Final Office Action relies on Kanevsky to show this feature. Appellant respectfully asserts that Kanevsky is equally deficient.

Kanevsky relates to a method for collecting data associated with the voice of a voice system user. Abstract. The system determines from the voice of the user whether the user is in a happy emotional state, or whether the user is in a fearful and angry emotional state, and the system provides the user with a different response depending on whether the user is in a happy or an angry emotional state. Col. 11, lines 49-53. Specifically, if the user is in a happy emotional state, the system offers to the user at least one of a product and a service. Col. 11, lines 53-55. Alternatively, if the user is in an angry emotional state, the system transfers the user from an IVR system to a human operator. As such, Kanevsky teaches a system that makes an inference, from

the user's current emotional state, as to whether the user should be provided with a particular offer or instead transferred to a human operator. Accordingly, Kanevsky does not describe or suggest storing a caller's actual preference not to receive any sales pitches.

In response to the above-presented arguments, the Final Office Action asserts that "detection of a user who has problem with the automated system and should be transferred to an operator and detection of [a user] who [is] angry at the service and should be transferred to a supervisory person are considered a preference of the caller no to receive any sales pitch." Final Office Action, page 13, lines 14-18. In other words, the Final Office Action seems to suggest that the user's projection of mood or difficulty dealing with the system operates as an indication of a preference for or against receiving an advertisement. Appellant disagrees. The user's projection of mood or difficulty dealing with the system is different from detecting users who have a preference not to receive any sales pitches *because* a preference of the caller not to receive any sales pitches necessarily requires that the caller choose or otherwise select not to receive any sales pitches. A mere inference that the caller may or may not wish to receive a sales pitch, as suggested by Kanevsky, is insufficient to meet this limitation.¹

This distinction is important because Kanevsky's system is simply unable to satisfy a caller's actual sales pitch preferences. For example, an angry caller may still be interested in a sales pitch, and thus may have a preference to receive sales pitches, yet Kanevsky's system would not permit that caller to receive a sales pitch because the caller is detected as being angry. Similarly, a happy caller may not be interested in receiving any sales pitches, and thus may have a preference not to receive any sales pitches, yet Kanevsky's system would burden that caller with an undesired sales pitch simply because the system detected the caller as being happy. Similarly, a caller who is having a problem with the automated system may very well wish to receive sales pitch preferences while figuring the system out. In sum, Kanevsky's system detects and stores moods of a caller and presents or does not present sales pitches based on the detected moods. Kanevsky's system, however, does not store caller sales pitch preferences, much less a caller sales pitch preference not to receive any sales pitches.

¹ Dictionary.com defines preference as the selection of someone or something over another. See www.dictionary.com. Merriam-Webster defines preference as the power or opportunity of choosing. See www.m-w.com.

For at least the forgoing reasons, Appellant respectfully requests reconsideration and withdrawal of the rejection of claim 90, along with its dependent claims. Independent claims 107 and 120 recite features similar to the above-recited features of claim 90. Therefore, for at least the reasons presented above with respect to claim 90, Appellant respectfully requests reconsideration and withdrawal of the rejection of claims 107 and 120, along with their dependent claims.

2. Dhir and Kanevsky, either alone or in the proposed combination, fail to describe or otherwise suggest “storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller, the sales pitch preference comprising a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product” (emphasis added), as recited in claim 136.

The Final Office Action seems to acknowledge that Dhir fails to describe or suggest the above-recited feature and relies on Kanevsky for such teachings. In particular, The Final Office Action relies on, among other sections, column 7, lines 46-54, of Kanevsky to show the above-recited feature. Final Office Action, page 7, line 18. In column 7, lines 46-54, however, Kanevsky teaches “[b]usiness objectives can include, for example, detection of users who are vulnerable to a proposal to buy a given product or service, detection of users who have problems with the automated system and should be transferred to an operator and detection of users who are angry at the service and should be transferred to a supervisory person” (emphasis added). Here, Kanevsky simply teaches detection of a user who is vulnerable to a proposal to buy a given product or service without any further teaching or suggestion as to how this detection relates to a user sales pitch preference. This is *different* from detecting users who have a preference not to receive any sales pitches related to a provider of the first service or product. In particular, even if this detection of user vulnerability could somehow be properly characterized as a sales pitch preference of the user, which Appellant does not concede, Kanevsky is silent as to whether this detection would be a basis to offer the user a particular sales pitch or not to offer the user a particular sales pitch. That is, it is not clear based on Kanevsky’s teaching whether such detection would be used by Kanevsky’s system to target the user with a sales pitch for the product or service to which the user is vulnerable and perhaps thereby increase the likelihood of

a sale, or would instead be used not to target the user with such a sales pitch. In either case, Kanevsky, nevertheless, still fails to describe or suggest storing a sales pitch preference of a caller not to receive any sales pitches related to a provider of that product or service.

Furthermore, even if one were to assume *arguendo* that the detection of a user's vulnerability to a proposal to buy a given product or service could be properly characterized as a user preference not to receive a sales pitch related to that particular product or service, which Appellant does not concede, Kanevsky would, nevertheless, still fail to meet the above-stated feature because a preference to not receive a sales pitch related to a product or service is not the same as a preference to not receive any sales pitches related to a provider of that product or service.

This distinction is perhaps best illustrated with an example. Kanevsky's system may detect that a user is vulnerable to alcohol and, therefore, Kanevsky's system, under the above assumptions, may decide not to present the user with any sales pitches offering alcoholic beverages from a provider. Kanevsky's system, however, would still present the user with sales pitches from that same provider if the provider offers other kinds of beverages or other kinds of products or services in addition to alcoholic beverages. Put simply, as long as the provider offers other kinds of products or services in addition to alcoholic beverages, the provider can still target the user with sales pitches related to those other kinds of products or services. In contrast, in claim 136, after the user expresses a desire not to receive any sales pitch from a provider of a service or product, the user will not receive any sales pitches whatsoever from any provider that provides that product or service, irrespective of the other kinds of product or services offered by the provider. For at least the forgoing reasons, Appellant respectfully requests reconsideration and withdrawal of the rejection of claim 136, along with its dependent claims.

3. Dhir, Kanevsky, and Szlam, either alone or in the proposed combination, fail to describe or suggest at least “a call routing code segment that causes the computer to bypass the second database code segment and to route the service call to a human operator based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account” (emphasis added), as recited in claim 133.

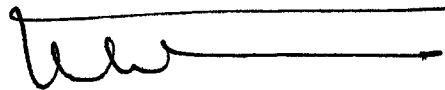
The Final Office Action seems to acknowledge the shortcomings of Dhir and Kanevsky in this regard and instead relies on Szlam for teaching this feature. In particular, the Final Office Action asserts that Szlam teaches past misbehavior that includes the caller violating a terms of service agreement associated with the caller's account. Final Office Action, page 11, lines 11-13. Appellant submits that Szlam is equally deficient. Szlam teaches determining to route the call to an agent or human operator based on whether or not the human operator has been placed on hold by a party and not based on whether the caller has acted illegally or has violated a term of service agreement. As such, even if we assume for the sake of argument that Szlam teaches the feature of acting illegally or violating a term of service agreement, Szlam does not describe or suggest using an illegal act or a term of service agreement violation as a basis to determine whether or not to route the service call to a human operator. For at least this reason, Appellant respectfully requests reconsideration and withdrawal of the rejection of claim 133, along with its dependent claims.

Independent claims 134 and 135 recite features similar to the above-recited features of claim 133. Therefore, for at least the reasons presented above with respect to claim 133, Appellant requests reconsideration and withdrawal of the independent claims 134 and 135, along with their dependent claims.

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 6/19/07



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